

Message Text

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APPROVED BY L: GALDRICH

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S/ S - MR. MILLER

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TO AMEMBASSY SAN JOSE PRIORITY

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C O N F I D E N T I A L STATE 119614

EXDIS

E. O. 11652: GDS

TAGS: PGOV, PFOR, CS

SUBJECT: EXTRADITION - ROBERT VESCO

REF: SAN JOSE 2163

1. INFORMATION REFTEL DISCUSSED WITH DEPT. OF JUSTICE TO ASCERTAIN U. S. PRACTICE. BECAUSE OF A PROVISION IN U. S. CRIMINAL LAW, 18 USC 3184, WHICH STATES, IN PART, THAT A JUDGE MAY ISSUE A WARRANT UPON COMPLAINT MADE UNDER OATH, CHARGING QTE ANY PERSON FOUND WITHIN HIS JURISDICTION, UNQTE WITH HAVING COMMITTED A CRIME, JUSTICE DEPT. DOES NOT SEEK PROVISIONAL ARREST OF A FUGITIVE UNLESS IT KNOWS EXACT WHEREABOUTS OF THE FUGITIVE OR HAS A STRONG INDICATION AND BELIEF THAT THE FUGITIVE IS LOCATED AT THE PLACE ALLEGED BY THE FOREIGN GOVERNMENT. BECAUSE OF THE REQUIREMENT OF THE ABOVE- CITED LAW THAT THE PERSON HAS TO BE WITHIN THE JURISDICTION OF THE JUDGE ISSUING THE ARREST WARRANT, THE INFORMATION FURNISHED BY THE FOREIGN GOVERNMENT AS TO THE LOCATION OF THE FUGITIVE HAS
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TO BE FAIRLY SPECIFIC. AN ASSERTION THAT A FUGITIVE IS WITHIN THE U. S. OR WITHIN A PARTICULAR STATE WILL NOT SUFFICE, AS THERE IS MORE THAN ONE FEDERAL JUDICIAL DISTRICT IN MANY STATES.

2. IF A JUDGE ISSUES A WARRANT FOR A FUGITIVES ARREST, ON STRONG BELIEF THAT THE FUGITIVE IS TO BE FOUND WITHIN THE COURT' S JURISDICTION, AND THEN THE FUGITIVE CANNOT BE LOCATED, THE WARRANT IS VALID AND MAY BE EXECUTED AT ANY TIME WHEN THE FUGITIVE IS LOCATED, WHEREVER HE IS LOCATED. FOR EXAMPLE, IF THE ARREST WARRANT IS ISSUED BY A JUDGE IN NEW YORK CITY, BUT THE FUGITIVE IS NOT LOCATED UNTIL FIVE MONTHS LATER IN KANSAS, THE FUGITIVE CAN BE ARRESTED IN KANSAS ON THE BASIS OF THE VALID ARREST WARRANT OUTSTANDING IN NEW YORK. JUSTICE HAS INFORMED US THAT USUAL PRACTICE IS, IF A FUGITIVE IS NOT LOCATED UNTIL MONTHS OR YEARS AFTER AN ARREST WARRANT HAS BEEN ISSUED, TO ASK THE DEPART. TO FIRST ASK THE FOREIGN COUNTRY IF IT IS STILL INTERESTED IN THE EXTRA-DITION OF THE FUGITIVE. IF THE FOREIGN COUNTRY INDICATES IT IS INTERESTED, THE FUGITIVE IS ARRESTED.

3. 18 USC 3184 FURTHER PROVIDES THAT ARREST WARRANT IS ISSUED SO THAT FUGITIVE QTE MAY BE BROUGHT BEFORE SUCH JUSTICE, JUDGE, OR MAGISTRATE, TO THE END THAT THE EVIDENCE OF CRIMINALITY MAY BE HEARD AND CONSIDERED. UNQTE
THUS, EVEN THOUGH AN ORDER FOR PROVISIONAL ARREST MAY BE ISSUED BY JUDGE ON STRONG BELIEF THAT FUGITIVE IS WITHIN HIS JURISDICTION, EXTRADITION HEARING CANNOT REPEAT CANNOT TAKE PLACE UNLESS AND UNTIL THE FUGITIVE IS PHYSICALLY BROUGHT BEFORE THE COURT. SO, UNDER U. S. LAW THERE CANNOT BE A FINAL EXTRADITION ORDER BY A MAGISTRATE UNTIL THERE HAS BEEN AN EXTRADITION HEARING WHICH REQUIRES THE PHYSICAL PRESENCE OF THE ACCUSED. ROGERS

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